

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

Complaint

Introduction

1. The Fair Debt Collection Practices Act was enacted in response to the demands of consumers who were suffering from debt collectors unrestrained by federal law. The FDCPA prohibits debt collectors from engaging in false and misleading representations, harassing and abusive conduct, and the unfair treatment of consumers.
2. In enacting the FDCPA, Congress found that debt collection abuses led to bankruptcies, marital disharmony, job loss, and invasions of individual privacy. Among the actions prohibited by the FDCPA are making communications that are false or misleading, including but not limited to communications that make a false representation of the amount, character, or legal status of a debt, 15 U.S.C. § 1692e(2)(A); and the use of any

false representation in collecting or attempting to collect a debt, 15 U.S.C. § 1692e(10).

3. Attorneys do not enjoy a litigation privilege in the collection of consumer debts. The first FDCPA case considered by the Supreme Court held that attorneys collecting debts through litigation are subject to the FDCPA. *Heintz v. Jenkins*, 514 U.S. 291 (1995).
4. Plaintiff brings this action against Defendant for its misrepresentations made during litigation attempting to collect Plaintiff's alleged debt and seeks actual damages, statutory damages, attorney's fees and costs of litigation.

Jurisdiction & Venue

5. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.
6. Venue is proper in this district and division pursuant to 28 U.S.C. § 1391(b) as a substantial part of the events or omissions giving rise to Plaintiff's claims occurred here.

Parties

7. Plaintiff, Herman Roy Beckham, is a natural person who resides in and has resided in San Antonio, Bexar County, Texas at all times relevant to this action.
8. Defendant, Scott & Associates, P.C. is a Texas professional corporation whose principal business address is 1120 Metrocrest Dr, Ste 100,

Carrollton, Texas 75006. It may be served with summons via its registered agent National Registered Agents, Inc. at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

Facts

9. Scott regularly collects, and attempts to collect, defaulted debts which were incurred, or alleged to have been incurred, for personal, family, or household purposes on behalf of others using the U.S. Mail, telephone, and internet.

10. The principal purpose of Scott is the collection of such debts.

11. The Debt is a defaulted debt that Beckham used for personal, family, and household purposes (the “Debt”).

12. Beckham used a Bank of America credit card for many years, and had always been able to make timely payments on it.

13. Due to unforeseen circumstances, he became unable to make regular payments on his debt, and defaulted.

14. After some time Bank of America charged-off his account.

15. The Debt was sold or assigned to Scott.

16. Scott filed suit in Bexar County Court at Law Number 10 on May 23, 2018 to collect the Debt.

17. Beckham was served on June 20, 2018.

18. Beckham filed an answer to the suit on June 22, 2018.

19. Scott filed a motion for default judgment on September 25, 2018.

20. In its motion, filed with the Court, Scott stated that Beckham had not filed an answer, when in fact he had.

21. A true and correct copy of Scott's motion for default judgment (without its supporting affidavits and documents) is attached as Exhibit A.

22. A true and correct copy of the docket entries in the County Court case, as of October 24, 2018, found for free online at
https://apps.bexar.org/Search/Details?r=e1642373-c40a-4ddb-aa03-828914803be9&st=1&l=beckham&fn=roy&m=&p=2_2018CV02946+++CI0000200000 is attached as Exhibit B.

23. Scott's motion for default judgment was a communication that made an false statement regarding the legal status of the debt and a false representation in collecting a debt.

Cause of Action – Fair Debt Collection Practices Act

24. Scott is a debt collector as defined by 15 U.S.C. § 1692a(6).

25. The Debt is a debt as defined by 15 U.S.C. § 1692a(5).

26. Beckham is a consumer as defined by 15 U.S.C. § 1692a(3).

27. The motion for default judgment is a communication as defined by 15 U.S.C. § 1692a(2).

28. The motion for default judgment violates the FDCPA in that it:

- a. Makes a false representation regarding the character, amount, or legal status of a debt in violation of 15 U.S.C. § 1692e(2)(A); and

- b. Uses a false representation or deceptive means to collect or attempt to collect any debt in violation of 15 U.S.C. § 1692e(10).

Jury Demand

29. Plaintiff demands this case be tried before a jury.

Prayer for Relief

Plaintiff prays, that this Court enter judgment against Defendant and in favor of Plaintiff for:

- a. Actual damages per 15 U.S.C. § 1692 k(a)(1);
- b. Statutory damages per 15 U.S.C. § 1692k(a)(2); and
- c. Attorney's fees, costs, and litigation expenses per 15 U.S.C. § 1692k(a)(3).

Dated: October 24, 2018

Respectfully Submitted,

/s/William M. Clanton
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